



April 3, 2007

ENGROSSED SENATE BILL No. 206

DIGEST OF SB 206 (Updated April 3, 2007 12:03 pm - DI 75)

Citations Affected: IC 8-1; noncode.

Synopsis: Energy facilities. Amends the definition of "clean coal technology" in various statutes. Defines the term as a technology used at an electric or a steam generating facility to reduce carbon, sulfur, mercury, or nitrogen based pollutants or particulate matter emissions that are regulated, or reasonably anticipated by the utility regulatory commission (IURC) to be regulated, by the federal government, the state, or a political subdivision of the state. (The current definition
(Continued next page)

Effective: Upon passage.

Gard, Kruse

(HOUSE SPONSORS — CROOKS, BEHNING, LUTZ J)

January 11, 2007, read first time and referred to Committee on Utilities & Regulatory Affairs.

January 29, 2007, amended, reported favorably — Do Pass.

February 1, 2007, read second time, amended, ordered engrossed.

February 2, 2007, engrossed.

February 8, 2007, read third time, passed. Yeas 29, nays 17.

HOUSE ACTION

February 26, 2007, read first time and referred to Committee on Commerce, Energy and Utilities.

April 3, 2007, amended, reported — Do Pass.

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includes only technologies that reduce sulfur or nitrogen emissions.) Requires the IURC, upon the request of the county executives of three or more counties that are located in an electric utility's service area, to study the feasibility of establishing a regional public power authority to: (1) acquire the assets of an electric utility providing retail electric service on April 1, 2007, in specified counties in Indiana; (2) own and operate the assets acquired; and (3) act as a nonprofit utility to provide retail electric service to customers within the participating units. Requires the commission to report its findings not later than December 31, 2007, to: (1) the regulatory flexibility committee; (2) the legislative council; and (3) the county executive of each county in the electric utility's service area on April 1, 2007. Authorizes the regulatory flexibility committee to recommend any legislation necessary to establish a regional public power authority in Indiana. Makes technical corrections.

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April 3, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 206

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in
3 this section, "clean coal technology" means a technology (including
4 precombustion treatment of coal):

5 (1) that is used at a new or existing electric **or steam** generating
6 facility and directly or indirectly reduces **or avoids** airborne
7 emissions:

8 (A) of:

9 (i) **carbon**, sulfur, **mercury**, or nitrogen based pollutants; **or**

10 (ii) **particulate matter**;

11 (B) **that are** associated with the combustion or use of coal;
12 and

13 (C) **that are regulated, or reasonably anticipated by the**
14 **commission to be regulated, by:**

15 (i) **the federal government**;

16 (ii) **the state**;

17 (iii) **a political subdivision of the state; or**

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(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric **or steam** generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal; after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, **mercury**, or nitrogen based pollutants; **or**

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- 1 (ii) particulate matter;
- 2 (B) that are associated with the combustion or use of coal;
- 3 and
- 4 (C) that are regulated, or reasonably anticipated by the
- 5 commission to be regulated, by:
- 6 (i) the federal government;
- 7 (ii) the state;
- 8 (iii) a political subdivision of the state; or
- 9 (iv) any agency of a unit of government described in
- 10 items (i) through (iii); and
- 11 (2) that either:
- 12 (A) is not in general commercial use at the same or greater
- 13 scale in new or existing facilities in the United States as of
- 14 January 1, 1989; or
- 15 (B) has been selected by the United States Department of
- 16 Energy for funding under its Innovative Clean Coal
- 17 Technology program and is finally approved for such funding
- 18 on or after January 1, 1989.
- 19 "Indiana coal" means coal from a mine whose coal deposits are
- 20 located in the ground wholly or partially in Indiana regardless of the
- 21 location of the mine's tipple.
- 22 "Qualified pollution control property" means an air pollution control
- 23 device on a coal burning electric **or steam** generating facility or any
- 24 equipment that constitutes clean coal technology that has been
- 25 approved for use by the commission, that meets applicable state or
- 26 federal requirements, and that is designed to accommodate the burning
- 27 of coal from the geological formation known as the Illinois Basin.
- 28 "Utility" refers to any electric **or steam** generating utility allowed
- 29 by law to earn a return on its investment.
- 30 (b) Upon the request of a utility that began construction after
- 31 October 1, 1985, and before March 31, 2002, of qualified pollution
- 32 control property that is to be used and useful for the public
- 33 convenience, the commission shall for ratemaking purposes add to the
- 34 value of that utility's property the value of the qualified pollution
- 35 control property under construction, but only if at the time of the
- 36 application and thereafter:
- 37 (1) the facility burns only Indiana coal as its primary fuel source
- 38 once the air pollution control device is fully operational; or
- 39 (2) the utility can prove to the commission that the utility is
- 40 justified because of economic considerations or governmental
- 41 requirements in utilizing some non-Indiana coal.
- 42 (c) The commission shall adopt rules under IC 4-22-2 to implement

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1 this section.

2 SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in
4 this section, "clean coal technology" means a technology (including
5 precombustion treatment of coal):

6 (1) that is used in a new or existing electric **or steam** generating
7 facility and directly or indirectly reduces **or avoids** airborne
8 emissions:

9 (A) of:

10 (i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**

11 (ii) **particulate matter;**

12 (B) **that are** associated with the combustion or use of coal;
13 and

14 (C) **that are regulated, or reasonably anticipated by the**
15 **commission to be regulated, by:**

16 (i) **the federal government;**

17 (ii) **the state;**

18 (iii) **a political subdivision of the state; or**

19 (iv) **any agency of a unit of government described in**
20 **items (i) through (iii); and**

21 (2) that either:

22 (A) is not in general commercial use at the same or greater
23 scale in new or existing facilities in the United States as of
24 January 1, 1989; or

25 (B) has been selected by the United States Department of
26 Energy for funding under its Innovative Clean Coal
27 Technology program and is finally approved for such funding
28 on or after January 1, 1989.

29 (b) The commission shall allow a public or municipally owned
30 electric **or steam** utility that incorporates clean coal technology to
31 depreciate that technology over a period of not less than ten (10) years
32 or the useful economic life of the technology, whichever is less and not
33 more than twenty (20) years if it finds that the facility where the clean
34 coal technology is employed:

35 (1) utilizes and will continue to utilize (as its primary fuel source)
36 Indiana coal; or

37 (2) is justified, because of economic considerations or
38 governmental requirements, in utilizing non-Indiana coal;
39 after the technology is in place.

40 SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This
42 section applies to a utility that begins construction of qualified

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pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, mercury, or nitrogen oxides;

(ii) **particulate matter**; or

(iii) other ~~regulated~~ air emissions;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

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SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**

(ii) **particulate matter;**

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

SECTION 6. IC 8-1-8.7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) Except as provided in subsection (c), a public utility may not use clean coal technology at a new or existing electric generating facility without first applying for and obtaining from the commission a certificate that states that public convenience and necessity will be served by the use of clean coal technology.

(b) The commission shall issue a certificate of public convenience and necessity under subsection (a) if the commission finds that a clean coal technology project offers substantial potential of reducing ~~sulfur or nitrogen based~~ pollutants **described in section 1(1) of this chapter** in a more efficient manner than conventional technologies in general use as of January 1, 1989. For purposes of this chapter, a project that the United States Department of Energy has selected for funding under its Innovative Clean Coal Technology program and is finally approved for funding after December 31, 1988, is not considered a conventional

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technology in general use as of January 1, 1989. When determining whether to grant a certificate under this section, the commission shall examine the following factors:

(1) The costs for constructing, implementing, and using clean coal technology compared to the costs for conventional emission reduction facilities.

(2) Whether a clean coal technology project will also extend the useful life of an existing electric generating facility and the value of that extension.

(3) The potential reduction of ~~sulfur and nitrogen based~~ pollutants **described in section 1(1) of this chapter that can be** achieved by the proposed clean coal technology system.

(4) The reduction of ~~sulfur nitrogen based~~ pollutants **described in section 1(1) of this chapter** that can be achieved by conventional pollution control equipment.

(5) Federal ~~sulfur and nitrogen based~~ pollutant emission standards.

(6) The likelihood of success of the proposed project.

(7) The cost and feasibility of the retirement of an existing electric generating facility.

(8) The dispatching priority for the facility utilizing clean coal technology, considering direct fuel costs, revenues and expenses of the utility, and environmental factors associated with byproducts resulting from the utilization of the clean coal technology.

(9) Any other factors the commission considers relevant, including whether the construction, implementation, and use of clean coal technology is in the public's interest.

(c) A public utility is not required to obtain a certificate under this chapter for a clean coal technology project that constitutes a research and development project that may be expensed under IC 8-1-2-6.1.

SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, mercury, or nitrogen oxides;

(ii) **particulate matter**; or

(iii) other ~~regulated~~ air emissions;

(B) **that are** associated with the combustion or use of coal;

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and

(C) that are regulated, or reasonably anticipated by the commission to be regulated, by:

(i) the federal government;

(ii) the state;

(iii) a political subdivision of the state; or

(iv) any agency of a unit of government described in items (i) through (iii); and

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

(A) more than four hundred thousand (400,000); but

(B) less than five hundred thousand (500,000);

retail electric customers in Indiana on April 1, 2007; and

(2) has a service area that includes, among other counties, each of the counties described in IC 36-7-7.6-1.

(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.

(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established to:

(1) acquire the generation, transmission, and distribution assets of an electric utility or an electric utility holding company;

(2) own and operate the assets described in subdivision (1); and

(3) act as a nonprofit utility to provide retail electric service to residential, commercial, industrial, and governmental

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customers within the participating units.

(e) Upon the request of the county executives of three (3) or more counties that are located in an electric utility's service area, the commission shall study the feasibility of establishing a regional public power authority. The study required by this subsection must include the following:

(1) An examination of the need to:

(A) enact new state statutes or regulations; or

(B) amend existing state statutes or regulations;

to permit the establishment of a regional public power authority.

(2) A valuation of the electric utility's generation, transmission, and distribution assets to be acquired by the regional public power authority.

(3) A study of:

(A) existing and potential funding sources or other mechanisms, including the use of eminent domain, available to the regional public power authority to acquire the assets described in subdivision (2); and

(B) the method for determining each participating unit's respective:

(i) contribution toward the acquisition of the assets; and

(ii) ownership interest in the assets acquired.

(4) A study of similarly sized public power authorities operating in the United States, including information on the assets, expenses, operations, management, and customer bases of the authorities, to the extent the information is available.

(5) A cost benefit analysis of establishing a regional public power authority.

(6) A determination of whether the establishment of a regional public power authority is in the public interest.

(7) An examination of any other issues concerning the establishment of a regional public power authority that the commission considers relevant or necessary for study.

(f) As necessary to conduct the study required by subsection (e), the commission may:

(1) make use of the commission's existing resources and technical staff;

(2) employ or consult with outside analysts, engineers, experts, or other professionals; and

(3) consult with other:

(A) public power authorities operating in the United

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1 States; or

2 (B) state regulatory commissions that:

3 (i) regulate public power authorities; or

4 (ii) have conducted similar studies.

5 (g) Not later than December 31, 2007, the commission shall
6 provide a report to the following on the commission's findings from
7 the study conducted under subsection (e):

8 (1) The regulatory flexibility committee established by
9 IC 8-1-2.6-4. The report provided to the regulatory flexibility
10 committee under this subsection must be separate from the
11 commission's annual report to the regulatory flexibility
12 committee under IC 8-1-2.5-9(b).

13 (2) The legislative council. The report provided to the
14 legislative council under this subsection must be in an
15 electronic format under IC 5-14-6.

16 (3) The county executive of each county in the electric utility's
17 service area on April 1, 2007.

18 (h) The report required by subsection (g) must contain the
19 following:

20 (1) A summary of the commission's findings with respect to
21 each issue set forth in subsection (e).

22 (2) Recommendations to the regulatory flexibility committee
23 on any legislation needed to establish a regional public power
24 authority.

25 (3) Any other findings or recommendations that the
26 commission considers relevant or useful to the entities
27 described in subsection (g).

28 (i) Before the commission submits its report under subsection
29 (g), any entity described in subsection (g) may require the
30 commission to provide one (1) or more status reports on the
31 commission's study under subsection (e). A status report provided
32 to the legislative council under this subsection must be in an
33 electronic format under IC 5-14-6.

34 (j) The regulatory flexibility committee:

35 (1) shall review the analyses and recommendations of the
36 commission contained in:

37 (A) any status reports provided by the commission under
38 subsection (i); and

39 (B) the commission's final report provided under
40 subsection (g); and

41 (2) may recommend to the general assembly any legislation
42 that is necessary to establish a regional public power

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1 authority in Indiana, if the regulatory flexibility committee
2 determines that the establishment of a regional public power
3 authority is in the public interest.

4 (k) This SECTION does not empower the commission or any
5 entity described in subsection (g) to require an electric utility to
6 disclose confidential and proprietary business plans and other
7 confidential information without adequate protection of the
8 information. The commission and all entities described in
9 subsection (g) shall exercise all necessary caution to avoid
10 disclosure of confidential information supplied under this
11 SECTION.

12 SECTION 9. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities and Regulatory Affairs, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 8, delete line 1 and insert "**electric generating facility**" refers **to a facility in Indiana**,".

Page 8, line 2, delete "that:" and insert "**that, regardless of its fuel source, is used to generate electricity**,".

Page 8, delete lines 3 through 5.

Page 8, line 10, delete "energy" and insert "**electric**".

Page 8, line 19, delete "energy" and insert "**electric**".

and when so amended that said bill do pass.

(Reference is to SB 206 as introduced.)

HERSHMAN, Chairperson

Committee Vote: Yeas 7, Nays 3.

 SENATE MOTION

Madam President: I move that Senate Bill 206 be amended to read as follows:

Page 8, line 24, delete "finds" and insert "**finds, after notice and hearing**,".

Page 8, delete lines 31 through 33.

Page 8, line 34, delete "(3)" and insert "**(2)**".

Page 8, delete lines 38 through 39, begin a new paragraph and insert:

"(d) In addition to the incentives described in subsection (c), the commission may provide any of the following incentives for an approved regulated air emissions project:

(1) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on the project.

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(2) Other financial incentives the commission considers appropriate."

(Reference is to SB 206 as printed January 30, 2007.)

GARD

SENATE MOTION

Madam President: I move that Senator Kruse be added as second author of Engrossed Senate Bill 206.

GARD

COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy and Utilities, to which was referred Senate Bill 206, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:
"SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.1. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

- (i) **carbon**, sulfur, **mercury**, or nitrogen based pollutants; **or**
- (ii) **particulate matter**;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

- (i) **the federal government**;
- (ii) **the state**;
- (iii) **a political subdivision of the state**; or
- (iv) **any agency of a unit of government described in items (i) through (iii); and**

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(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) As used in this section, "Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

(c) Except as provided in subsection (d), the commission shall allow a utility to recover as operating expenses those expenses associated with:

(1) research and development designed to increase use of Indiana coal; and

(2) preconstruction costs (including design and engineering costs) associated with employing clean coal technology at a new or existing coal burning electric **or steam** generating facility if the commission finds that the facility:

(A) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(B) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

(d) The commission may only allow a utility to recover preconstruction costs as operating expenses on a particular project if the commission awarded a certificate under IC 8-1-8.7 for that project.

(e) The commission shall establish guidelines for determining recoverable expenses.

SECTION 2. IC 8-1-2-6.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.6. (a) As used in this section:

"Clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used at a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, **mercury**, or nitrogen based pollutants; **or**

(ii) **particulate matter**;

(B) **that are** associated with **the** combustion or use of coal;

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and

(C) that are regulated, or reasonably anticipated by the commission to be regulated, by:

- (i) the federal government;**
- (ii) the state;**
- (iii) a political subdivision of the state; or**
- (iv) any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

"Indiana coal" means coal from a mine whose coal deposits are located in the ground wholly or partially in Indiana regardless of the location of the mine's tipple.

"Qualified pollution control property" means an air pollution control device on a coal burning electric **or steam** generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission, that meets applicable state or federal requirements, and that is designed to accommodate the burning of coal from the geological formation known as the Illinois Basin.

"Utility" refers to any electric **or steam** generating utility allowed by law to earn a return on its investment.

(b) Upon the request of a utility that began construction after October 1, 1985, and before March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction, but only if at the time of the application and thereafter:

- (1) the facility burns only Indiana coal as its primary fuel source once the air pollution control device is fully operational; or
- (2) the utility can prove to the commission that the utility is justified because of economic considerations or governmental requirements in utilizing some non-Indiana coal.

(c) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 3. IC 8-1-2-6.7 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.7. (a) As used in this section, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric **or steam** generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon, sulfur, mercury, or nitrogen based pollutants; or**

(ii) **particulate matter;**

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989.

(b) The commission shall allow a public or municipally owned electric **or steam** utility that incorporates clean coal technology to depreciate that technology over a period of not less than ten (10) years or the useful economic life of the technology, whichever is less and not more than twenty (20) years if it finds that the facility where the clean coal technology is employed:

(1) utilizes and will continue to utilize (as its primary fuel source) Indiana coal; or

(2) is justified, because of economic considerations or governmental requirements, in utilizing non-Indiana coal;

after the technology is in place.

SECTION 4. IC 8-1-2-6.8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6.8. (a) This section applies to a utility that begins construction of qualified pollution control property after March 31, 2002.

(b) As used in this section, "clean coal technology" means a

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technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, mercury, or nitrogen oxides;

(ii) **particulate matter**; or

(iii) other ~~regulated~~ air emissions;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government;**

(ii) **the state;**

(iii) **a political subdivision of the state; or**

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).

(c) As used in this section, "qualified pollution control property" means an air pollution control device on a coal burning energy generating facility or any equipment that constitutes clean coal technology that has been approved for use by the commission and that meets applicable state or federal requirements.

(d) As used in this section, "utility" refers to any energy generating utility allowed by law to earn a return on its investment.

(e) Upon the request of a utility that begins construction after March 31, 2002, of qualified pollution control property that is to be used and useful for the public convenience, the commission shall for ratemaking purposes add to the value of that utility's property the value of the qualified pollution control property under construction.

(f) The commission shall adopt rules under IC 4-22-2 to implement this section.

SECTION 5. IC 8-1-8.7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this

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chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing electric generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, **mercury**, or nitrogen based pollutants; or

(ii) **particulate matter**;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

(i) **the federal government**;

(ii) **the state**;

(iii) **a political subdivision of the state**; or

(iv) **any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

(A) is not in general commercial use at the same or greater scale in new or existing facilities in the United States as of January 1, 1989; or

(B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after January 1, 1989."

Delete pages 2 through 5.

Page 6, delete lines 1 through 8.

Page 7, delete lines 14 through 42, begin a new paragraph and insert:

"SECTION 7. IC 8-1-8.8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "clean coal technology" means a technology (including precombustion treatment of coal):

(1) that is used in a new or existing energy generating facility and directly or indirectly reduces **or avoids** airborne emissions:

(A) of:

(i) **carbon**, sulfur, mercury, or nitrogen oxides;

(ii) **particulate matter**; or

(iii) other ~~regulated~~ air emissions;

(B) **that are** associated with the combustion or use of coal; and

(C) **that are regulated, or reasonably anticipated by the commission to be regulated, by:**

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- (i) the federal government;**
- (ii) the state;**
- (iii) a political subdivision of the state; or**
- (iv) any agency of a unit of government described in items (i) through (iii); and**

(2) that either:

- (A) was not in general commercial use at the same or greater scale in new or existing facilities in the United States at the time of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549); or**
- (B) has been selected by the United States Department of Energy for funding under its Innovative Clean Coal Technology program and is finally approved for such funding on or after the date of enactment of the federal Clean Air Act Amendments of 1990 (P.L.101-549).**

SECTION 8. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(b) As used in this SECTION, "electric utility" means a public utility (as defined in IC 8-1-2-1(a)) that:

(1) provides retail electric service to:

- (A) more than four hundred thousand (400,000); but**
- (B) less than five hundred thousand (500,000);**

retail electric customers in Indiana on April 1, 2007; and

(2) has a service area that includes, among other counties, each of the counties described in IC 36-7-7.6-1.

(c) As used in this SECTION, "electric utility holding company" means a corporation, company, partnership, or limited liability company that owns an electric utility.

(d) As used in this SECTION, "regional public power authority" means a multicounty public power authority established to:

- (1) acquire the generation, transmission, and distribution assets of an electric utility or an electric utility holding company;**
- (2) own and operate the assets described in subdivision (1); and**
- (3) act as a nonprofit utility to provide retail electric service to residential, commercial, industrial, and governmental customers within the participating units.**

(e) Upon the request of the county executives of three (3) or more counties that are located in an electric utility's service area,

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the commission shall study the feasibility of establishing a regional public power authority. The study required by this subsection must include the following:

- (1) An examination of the need to:
 - (A) enact new state statutes or regulations; or
 - (B) amend existing state statutes or regulations;
 to permit the establishment of a regional public power authority.
- (2) A valuation of the electric utility's generation, transmission, and distribution assets to be acquired by the regional public power authority.
- (3) A study of:
 - (A) existing and potential funding sources or other mechanisms, including the use of eminent domain, available to the regional public power authority to acquire the assets described in subdivision (2); and
 - (B) the method for determining each participating unit's respective:
 - (i) contribution toward the acquisition of the assets; and
 - (ii) ownership interest in the assets acquired.
- (4) A study of similarly sized public power authorities operating in the United States, including information on the assets, expenses, operations, management, and customer bases of the authorities, to the extent the information is available.
- (5) A cost benefit analysis of establishing a regional public power authority.
- (6) A determination of whether the establishment of a regional public power authority is in the public interest.
- (7) An examination of any other issues concerning the establishment of a regional public power authority that the commission considers relevant or necessary for study.
- (f) As necessary to conduct the study required by subsection (e), the commission may:
 - (1) make use of the commission's existing resources and technical staff;
 - (2) employ or consult with outside analysts, engineers, experts, or other professionals; and
 - (3) consult with other:
 - (A) public power authorities operating in the United States; or
 - (B) state regulatory commissions that:
 - (i) regulate public power authorities; or

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(ii) have conducted similar studies.

(g) Not later than December 31, 2007, the commission shall provide a report to the following on the commission's findings from the study conducted under subsection (e):

(1) The regulatory flexibility committee established by IC 8-1-2.6-4. The report provided to the regulatory flexibility committee under this subsection must be separate from the commission's annual report to the regulatory flexibility committee under IC 8-1-2.5-9(b).

(2) The legislative council. The report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(3) The county executive of each county in the electric utility's service area on April 1, 2007.

(h) The report required by subsection (g) must contain the following:

(1) A summary of the commission's findings with respect to each issue set forth in subsection (e).

(2) Recommendations to the regulatory flexibility committee on any legislation needed to establish a regional public power authority.

(3) Any other findings or recommendations that the commission considers relevant or useful to the entities described in subsection (g).

(i) Before the commission submits its report under subsection (g), any entity described in subsection (g) may require the commission to provide one (1) or more status reports on the commission's study under subsection (e). A status report provided to the legislative council under this subsection must be in an electronic format under IC 5-14-6.

(j) The regulatory flexibility committee:

(1) shall review the analyses and recommendations of the commission contained in:

(A) any status reports provided by the commission under subsection (i); and

(B) the commission's final report provided under subsection (g); and

(2) may recommend to the general assembly any legislation that is necessary to establish a regional public power authority in Indiana, if the regulatory flexibility committee determines that the establishment of a regional public power authority is in the public interest.

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(k) This SECTION does not empower the commission or any entity described in subsection (g) to require an electric utility to disclose confidential and proprietary business plans and other confidential information without adequate protection of the information. The commission and all entities described in subsection (g) shall exercise all necessary caution to avoid disclosure of confidential information supplied under this SECTION."

Delete page 8.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 206 as reprinted February 2, 2007.)

CROOKS, Chair

Committee Vote: yeas 12, nays 0.

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